

MINUTES

MONTANA SENATE 56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 4, 1999 at 9:00 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 319, SB 320, 2/1/1999
Executive Action: SB 186, SB 258

HEARING ON SB 319

Sponsor: SEN. RIC HOLDEN, SD 1, Glendive

Proponents: Roger McGlenn, Independent Insurance Agents
of Montana
Mark Baker, National Association of
Independent Insurers, and AIA
Jon Metropolous, Farmers Insurance Group

Greg Van Horssen, State Farm Insurance

Opponents: **Frank Cote, Deputy Insurance Commissioner**
 Kate Cholewa, Montana Womens Lobby
 Glenda Tinsley, American Association of University
 Women
 Al Smith, Montana Trial Lawyers Association

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, Glendive, introduced SB 319, which will allow married couples to receive auto premium discounts. State law prohibits an insurer from offering premium discounts on auto insurance. Public policy adopted by the legislature in the early '80s was particularly hard on the young married couples in Montana. Young people who are married spend more time at home, have fewer accidents, and also have more bills to pay. It makes good sense for Montana carriers to competitively reestablish auto premium discounts for married persons.

{Tape : 1; Side : A; Approx. Time Counter : 9.08}

Proponents' Testimony:

Roger McGlenn, Independent Insurance Agents of Montana, remarked that if SB 319 passes, young married persons will receive reductions in their auto insurance rates. This belief is based on their review of rate factors from 1983 when marital status was still allowed. In 1983 there was a rate reduction for a married person 21 through 24 years old, without driving record problems, of between 10% and 45%. The insurance service office rates for a youthful operator 21-24 years old, without driving record problems and without marital status allowed, are 45% more than the non-youthful operator. A youthful driver 25-29 years old, without a driving record and without marital status, also has a 15% increase more than the non-youthful operator. He provided a copy of the rate factor sheets, **EXHIBIT(jus28a01)**.

There are over 200 rate factors that determine the ultimate premium that a person pays for auto insurance. They believe that the competitive marketplace would indicate a reduction in rates for young married persons, should the bill pass.

Mark Baker, National Association of Independent Insurers, and AIA rose in support of SB 319. This underwriting criteria should be available to the underwriters and insurers.

Jon Metropolous, Farmers Insurance Group, remarked that if insurers could give discounts, based on marital status, there

would be significant reductions of approximately 45% to 55% for married males who are youthful operators.

Greg Van Horssen, State Farm Insurance, rose in support of SB 319.

Opponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, maintained that one person's discount is another person's tax increase. This bill will discriminate against the single person. The discount will come from the pockets of the single mothers and fathers. Insurance companies can and should rate their policies based upon people's driving records. There are over 200 factors that insurance companies use to rate policies.

Kate Cholewa, Montana Womens Lobby, insisted that there are many persons struggling other than young married persons. Single parents are likely to be struggling. Students are struggling as well as parents with adolescents in the home. They disagree that a marriage license, as opposed to a driving record, is the best indicator of risk in matters of auto insurance. A single parent or a student is just as likely to be a responsible or an irresponsible driver as someone who is married. Would a person who is married three times before age 24 be a low risk? If a young person loses a spouse, does that person become a risk? Should their rates go up by 45% because their spouse died and they are now single again?

A person who marries at age 23 or 24 would have been paying higher rates up to that point. After 25 years of age, this discount is not relevant anymore. The discount will apply for a very short time. This system should be based on driving records and not marriage licenses. Written testimony -

EXHIBIT (jus28a02) .

Glenda Tinsley, American Association of University Women, reported that they support equity in all areas. This bill is inequitable in giving a discount to one class, it would discriminate against other classes. What about middle-aged people with children who are struggling to keep their children in college? What about older citizens who are living on a fixed income? Basing discounts upon the marital status of one particular group is quite discriminatory.

Al Smith, Montana Trial Lawyers Association, commented that they are concerned about adding further exceptions to the Human Rights Act. This bill adds another exception to the nondiscrimination parts of the Act.

Questions from Committee Members and Responses:

SEN. HALLIGAN questioned why marital status alone would result in a 10% to 40% reduction in rates when there were 200 factors used in setting rates. **Mr. McGlenn** stated that under today's rates a person with a clean driving record between the ages of 50 and 64 would receive a 10% discount. Between ages 65 and 74, they would receive a 15% discount. An unmarried person going to college over 100 miles away without a vehicle, would be allowed the married rate in other states that are allowed to use marital status.

SEN. HALLIGAN questioned the situation for a divorced person or a person whose spouse died. **Mr. McGlenn** explained that there are companies that will allow marital rates for significant others where there is a similar to married relationship without the benefit of a license. He also believes that a single parent would receive the marital status rate from most companies because they are home taking care of the child.

SEN. HALLIGAN asked whether one person's decrease in premium would be another person's increase in premium. **Mr. McGlenn** remarked that he represented insurance agents and not insurance companies. Agents do not set the rates. The industry will charge the rate commensurate with the funds needed to pay the losses.

SEN. JABS questioned whether a single mother would be available for this discount. **Mr. McGlenn** believed that some companies may give the marital status discount to a single parent. Many may not do so.

SEN. DOHERTY remarked that this bill would place a huge burden on private industry to develop the new codes that they have not had for many years. **Mr. McGlenn** responded that Montana is the only state that disallows the use of marital status in rating for personal auto use. The rates produced by the Insurance Service Office are used in most other states.

SEN. DOHERTY asked why rates should increase for single persons by adoption of marital status rates. **Mr. McGlenn** believed that rates would not increase for single persons over 25 years of age. **Mr. Cote** disagreed. In theory, as a single person with no accidents or citations, he should be a good risk and be able to receive good discounts. This bill will give insurance companies the opportunity to raise rates for single persons. The discounts need to be made up somewhere and the logical place is the rates of the unmarried individual.

SEN. HOLDEN added that perhaps **Mr. Cote** views this as a closed system. Private business is a competitive market. They reduce premiums to increase business.

Mr. Cote agreed that the insurance companies are currently in a competitive system. By giving a discount to married couples, they will need to offset that discount somewhere along the way. This will still result in a competitive marketplace but the difference will be higher rates for single individuals. He believe that many companies lose money in their underwriting process and make this up in their investment process. By allowing another discount, the only way to make up the discount is to raise the premiums in another area.

{Tape : 1; Side : A; Approx. Time Counter : 9.37}

Closing by Sponsor:

SEN. HOLDEN insisted that marriage is a significant change in lifestyle which directly links to driving habits. Auto insurance is a very competitive market. It is important to keep rates down so that more policies are sold.

HEARING ON SB 320

Sponsor: **SEN. RIC HOLDEN, SD 1, Glendive**

Proponents: **Peter Habein, Attorney**
Mark Baker, National Association of
Independent Insurers, and AIA
Jon Metropolous, Farmers Insurance Group
Greg Van Horssen, State Farm Insurance

Opponents: **Frank Cote, Deputy Insurance Commissioner**
Al Smith, Montana Trial Lawyers Association

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, Glendive, introduced SB 320. This bill will serve to disqualify illegal, uninsured drivers from collecting noneconomic damages. It also eliminates free riders from suing law abiding Montana citizens. The free riders need to take responsibility for paying the damages they cause before they sue for damages they incur. The bill will prohibit a person who commits a felony from suing for negligence.

{Tape : 1; Side : A; Approx. Time Counter : 9.42}

Proponents' Testimony:

Peter Habein, Attorney, explained that he represents a number of insurance carriers and their insureds. This legislation is not at their request, but at the request of **SEN. HOLDEN**. This bill is copied from California legislation which has been in force for two years. Similar legislation was sponsored by the California Insurance Commissioner who has credited the bill with saving consumers \$250 million in the first year that the bill was enacted.

We have a broken system of mandatory automobile insurance in the state. The code requires all owners of motor vehicles registered and operated in Montana or used with the owner's permission, to continuously provide insurance against loss resulting from liability imposed by law for bodily injury, death, or damage to property suffered by any person caused by the maintenance or use of a motor vehicle. The system assumes that if it works, there will be 100% participation in that 100% of the owner/drivers in Montana will maintain automobile liability coverage. The assumption is that Montana drivers will not be victims of financially irresponsible drivers.

The system does not work. Approximately 30% of Montana drivers violate the law and do not maintain mandatory automobile liability coverage. We have a three tier system of liability insurance. Liability insurance is at the top tier. This is the most assessable and likely to be needed insurance. This is mandated by the statute. The second tier is under insured coverage. This provides coverage if the driver who injures a party does not have enough liability insurance. The third tier of coverage is uninsured coverage and includes a driver who is entirely uninsured. The rates for uninsured motorists coverage are skyrocketing. With fewer people paying premiums, the premium pool is diminishing. When there are more than two drivers involved in an accident and one of the two defendants is uninsured, the one driver who is insured is the focus of plaintiff's attorneys.

The bill proposes an amendment to §61-6-304. This is the penalties section for driving without insurance. The amendment would add an additional penalty that states that if three things occur, the uninsured driver will be limited in the damages he or she may recover. This limitation will be to economic damages only and a prohibition against noneconomic damages. The injured person in the accident must be the owner of the motor vehicle involved in the accident. The injured person must have been previously convicted of violating the mandatory automobile liability statutes. This conviction needs to be within the previous five years. At the time of the accident, the injured person's vehicle that was involved in the accident, was not

insured and the insured person could not establish financial responsibility as required by §61-6-132.

The bill is a measured response and an appropriate penalty for drivers who choose to drive uninsured. By limiting the recovery that this person may have to economic damages only, the driver owner of the vehicle who elected not to maintain liability coverage is penalized. This does not penalize that person's spouse or family.

This legislation should have two important results. It will serve as deterrent and encourage people to maintain automobile liability coverage as the law requires. It will permit insurance companies to be more profitable in this area and, hopefully, pass that profitability in terms of premium rate savings to policy owners and premium payers in the state.

The second part of the bill provides that a felon, who in the course of committing a felony, is barred from recovery of any damages for injuries he or she may sustain.

He was originally concerned about those members of Montana's society who can least afford insurance coverage and the penalty imposed. He now believes that this bill favors consumers of all socioeconomic classes. The 30% of Montanans who elect to drive without financial responsibility are those drivers who have violated the law and have moving violations in their vehicles. Since they are high risk drivers and cannot afford the coverage, they elect to drive without it. The expense of those drivers falls on good drivers who buy automobile liability insurance. If a reduction in rates happens, all responsible drivers will benefit from rate reductions. Because this bill will make coverage more affordable for the people who are not currently buying liability insurance, it is a consumer oriented bill.

Jon Metropolous, Farmers Insurance Group, reported that 18% of their claims in the last year derived from accidents with uninsured people. There should be consequences for people who violate laws. This bill gives violators one free pass. Oftentimes young people are in difficult financial positions and make the wrong choices. Making a mistake twice is the start of a habit and the burden falls on the same people.

Greg Van Horssen, State Farm Insurance, rose in support of SB 320.

Mark Baker, National Association of Independent Insurers, and **AIA** rose in support of SB 320. He added that there is an increase in road rage across the country. This legislation is good for small businesses, especially those with small fleets of vehicles.

Under current tort system rules, uninsured motorists can collect from the system but by not maintaining liability insurance they do not contribute to the system. This legislation would resolve that situation.

{Tape : 1; Side : B; Approx. Time Counter : 10.09}

Opponents' Testimony:

Frank Cote, Deputy Insurance Commissioner, remarked that insurance companies are well represented today. It is not the insurance companies who need the help. The people who can't afford the insurance need the help. Montana ranks last in average income. This is not about people making choices not to buy insurance. It is a matter of simply not being able to afford the insurance. These people have to make the choice to put food on the table. They would love to buy insurance for their automobile, but are unable to do so.

For example, a widowed mother of two children driving to her second minimum wage job could run into a person with road rage who runs a stop sign. The result of the accident is that she could be paralyzed. How will this bill help that person and that person's family? Perhaps the medical bills may be paid. What about the family that cannot receive noneconomic damages for physical impairment or loss of income? This bill is bad legislation.

Al Smith, Montana Trial Lawyers Association, remarked that they support persons being responsible by purchasing insurance. They are concerned with the "no pay, no play" scheme. There is no track record. Only four states have this legislation. He added that at a recent hearing for low income individuals in this state, their main concern was to purchase liability insurance for their vehicles so they would be able to go back to work. Single mothers who are faced with a choice of buying food or insurance, must buy food for their children.

It has been mentioned that rates will decrease. In Louisiana, part of their bill required that premiums would go down. This occurred, but a few months later insurers were asking the Insurance Commissioner for increased rates. This could be a one time shot.

One reason insurance is purchased is to protect oneself. Another reason is that if you harm another person, this person will be taken care of. This bill would relieve insurance companies of having to pay out for noneconomic damages but there are no guarantees that there will be decreased rates.

Section 7 of the bill is about protecting the insurer and making sure that the insurer is not liable. An innocent person can be following all the traffic rules and be broadsided by another reckless driver. This person has done nothing wrong other than not purchasing insurance and this person can end up being an innocent victim who will lose out.

In new section 2, the criminal portion, a concern is the meaning of contributing cause. This states "in the absence of conviction, the court upon petition of an interested person (insurance company) shall determine whether under the preponderance of the evidence standard" they would be found criminally accountable. This involves a punishment because of a criminal act and the evidence standard is only preponderance of the evidence. Would this create an independent cause of action? No one has a soft spot for felons but the courts already deal with this. It would be difficult to find a jury that would punish a business owner because a felon was hurt on their property.

{Tape : 2; Side : B; Approx. Time Counter : 10.24}

Questions from Committee Members and Responses:

SEN. DOHERTY stated that the language addresses an insured not being liable. People don't sue insurance companies. They sue a person. The language leaves open the possibility that the insurance company will not be liable but the driver or the business owner could be liable. **Mr. Habein** stated that this is addressed in the preamble under (5) which states that an injured person may not recover noneconomic damages.

SEN. DOHERTY questioned whether (7) was necessary. **Mr. Habein** explained that this relates to a provision in the insurance code. The mandatory automobile liability statutes, 61-6-103, provides in (6)(a) that the liability of the insurance carrier with respect to the insurance required by this part becomes absolute whenever injury or damage covered by the motor vehicle liability policy occurs. They want to make clear that not only may the person not recover noneconomic damages, but an insurance company that issues a policy to comply with the mandatory automobile liability statutes and which otherwise has absolute liability under that policy, has an exception to that absolute requirement.

SEN. DOHERTY stated that this sets up a lesser standard for a civil trial to ask a civil judge to determine whether a person under a preponderance of the evidence would be found guilty under a "beyond a reasonable doubt" standard of evidence. Would it be possible for a person charged with a felony and found not guilty

to be barred from recovery because they have already had a civil determination that they may be found guilty. **Mr. Habein** explained that a person charged with a felony could enter into plea bargains that may result in deferred prosecution and simultaneously file a civil action. In the civil action, the burden of proof is different. The defendant wants to prove that this person was in fact breaking into a house and attempting to burglarize it when he fell into a hole that he could not see.

SEN. DOHERTY asked whether there has been a case where a person who was injured during the commission of a felony has sued and succeeded. **Mr. Habein** stated that he was involved in such a case. A farmer had a small plane and he and his friend, the plaintiff in the action, would hunt from the plane. They were illegally hunting from the plane out of season. In the process the plane crashed and the passenger was severely injured and sued the pilot. The argument that was used was that two people engaged in a criminal act cannot sue one another for injuries in that act. The Supreme Court stated that this did not apply to this circumstance but that it only applied to the most severe of criminal situations. Although this was a felony they were engaged in, the lawsuit could proceed forward. This bill would prevent that lawsuit.

SEN. DOHERTY remarked that the Supreme Court has determined that the right to recover is a fundamental right. This bill would limit the right of full legal redress by barring noneconomic damages. He asked if there would be objection to an amendment that stated that any savings garnered as a result of the passage of this bill must be passed on to insurance purchasers in the form of lowered rates.

Mr. Habein responded that the indirect effect of the bill would be to limit the recovery and redress of an individual. The bill provides a penalty for violation of the law. It amends and adds an additional penalty which is fully within the power of the legislature. This is different from enacting a limitation on full legal redress.

In California, the Insurance Commissioner made a condition on the legislation that the savings be passed onto the policyholders of the state. He reported that it saved California consumers \$250 million.

SEN. DOHERTY questioned whether there would be objection to an amendment stating that the bill is null and void unless we see savings passed on to Montana insurance consumers. **Mr. Habein** did not object.

SEN. HALLIGAN inquired why maintenance was include on line 8 of page 2. **Mr. Habein** responded that the statute requires automobile liability coverage for bodily injury or property damage resulting from the use or maintenance of a motor vehicle. An owner's only act of negligence may have been not to repair the brakes of the vehicle and that failure resulted in the inability to stop in a collision. The act is not bad driving but bad maintenance of the vehicle that results in the injuries.

SEN. HALLIGAN questioned why an opportunity for a second conviction was allowed. **Mr. Habein** explained that it is possible to inadvertently misplace the insurance bill and venture out onto the streets with a canceled policy. It seems prudent to have the result of inadvertence be taken into account before a penalty is imposed.

SEN. HALLIGAN believed that this language should be in Title 27 which addressed limitations on damages in general rather than a criminal penalty statute. **Mr. Habein** state that it is important that violation of the act is a penalty because it is under the legislature's power to prescribe penalties for violations of law.

SEN. DOHERTY remarked that it was his understanding that the belief is that this passes constitutional muster for preventing full legal redress because it is in the penalty section of the law. **Mr. Habein** responded that that is one of the grounds on which he would argue that it does pass constitutional muster.

SEN. DOHERTY asked if he was aware of any other section of criminal law in which a civil right is limited. Normally the criminal codes speak to prescribing conduct and include fines, penalties, and jail time and there is a certain specificity involved. Throwing in a block of civil rights that may be proclaimed at a later date is a novel way of using the criminal code. He asked if this was done in any other circumstances. **Mr. Habein** stated that he did not know of any other such circumstances.

Closing by Sponsor:

SEN. HOLDEN remarked that this legislation has the potential to decrease the amount of lawsuits and litigation that takes place in this state. The California Insurance Commissioner was behind this proposal because it was consumer oriented legislation. They are experiencing rate reductions. He added that the California Supreme Court upheld this legislation.

{Tape : 2; Side : A; Approx. Time Counter : 10.53}

EXECUTIVE ACTION ON SB 258

Motion: SEN. HALLIGAN moved to AMEND SB 258 - SB025801.av1, EXHIBIT(jus28a03).

Discussion:

SEN. HALLIGAN clarified that the amendments add language with respect to a parenting plan on page 2, line 22. There are times when the parents are not married and file a petition for custody or parenting.

Ms. Lane added that Ms. Wang wanted the original language of the bill put back in on page 1, line 17. This is included in the amendments.

SEN. GRIMES stated his support of the amendments.

Vote: Motion carried unanimously -9-0.

Motion: SEN. GRIMES moved that SB 258 DO PASS AS AMENDED.

Discussion:

SEN. MCNUTT asked for more clarification on the amendments. Ms. Lane explained that it was her understanding that Ms. Wang wanted the language to state "the court issues" instead of "when the respondent is served".

Vote: Motion carried unanimously -9-0.

EXECUTIVE ACTION ON SB 237

Discussion:

SEN. MCNUTT believed that the only way to make the situation equitable would be to declare that the court reporters were independent contractors. However, they are not interested in being independent contractors. He questioned whether the best thing to do might be to table the bill.

CHAIRMAN GROSFIELD remarked that there were some amendments and that SEN. WATERMAN is working on a solution.

SEN. BARTLETT remarked that with the fiscal note on the bill, it will end up in the Finance and Claims Committee. She questioned whether the bill would go through the standing committee, second

reading, and then be referred to the Finance and Claims Committee.

CHAIRMAN GROSFIELD affirmed that this would be the procedure.

SEN. BARTLETT remarked that when she asked the court reporters their attitude toward being independent contractors, she acknowledged that the definition of an independent contractor is a problematic situation for this set of individuals. Obviously, the court reporters and the judges have deep routed concerns about going down that route.

SEN. HALLIGAN maintained that the Finance and Claims Committee can deal with the policy decisions involved in whether or not to make these individuals state employees.

SEN. BARTLETT added that **SEN. WATERMAN** sits on the Finance and Claims Committee and needs to be a participant in the discussion around the amendments.

{Tape : 2; Side : A; Approx. Time Counter : 11.02}

EXECUTIVE ACTION ON SB 186

Motion: **SEN. GRIMES MOVED TO TAKE SB 186 OFF THE TABLE.**

Discussion:

SEN. BARTLETT asked that the amendments be explained before voting on removing SB 186 from the table.

Ms. Lane clarified that the amendments were brought to her last week. They incorporate the amendment requested by Jim Smith, which requires that the concealed weapon permit holder would lose his or her permit if they refused a breath test. It also inserts the prohibited places for carrying a gun with a permit and this includes the state and local government offices. The amendments also remove the intoxicating substance reference and reinserts alcoholic beverage.

Vote: The motion to remove SB 186 from the table carried unanimously - 9.0.

Motion: **SEN. HOLDEN** moved to **AMEND SB 186 - SB018602.av1, EXHIBIT(jus28a04).**

Discussion:

SEN. HALLIGAN asked if the **Sheriff's and Peace Officers Association** were in agreement with the amendments. **SEN. WELLS** reported that the amendments were a cooperative agreement with the **Sheriff's and Peace Officers Association** and representatives from **State Administration**.

SEN. WELLS explained that this language includes a large section on breath tests. They inadvertently overlooked including a statement that limited the breath test to be in a room or establishment where the alcoholic beverages were being sold. The new language locates the breath test to a bar or restaurant that serves alcohol. They did not mean to include "intoxicating substance" in the language because this would involve the full realm of drugs and would require blood tests which are way beyond the scope of this bill.

Amendment no. 3 is additional language that states if the person in the bar refuses the breath test, then the officer could revoke the person's concealed weapon permit. This is a fair challenge to the weapon permit holders. They know that the law states that they cannot consume alcohol and carry a gun.

Amendments no. 4 and 5 change the language back to "prohibited places". They originally removed "prohibited places" because they were removing the list of prohibited places and only addressing financial institutions. However, the **State Administration** asked that this language be reinserted. There are two prohibited places which include the banking and financial institutions and also the portions of the building used for state and local government offices and related areas that have been restricted. If it was required, they would restrict these areas with appropriate signs.

Currently if a concealed weapon permit holder stops at a rest stop, they cannot carry their weapon because the rest stop is owned by the government. This amendment eliminates rest stops and parking garages in a government building.

Dal Smilie, Department of Administration, remarked that the bill has been improved and will work for their purposes.

Vote: The motion carried unanimously - 9-0.

Motion: **SEN. MCNUTT** moved that **SB 186 DO PASS AS AMENDED**.

Discussion:

SEN. BISHOP questioned how much alcohol consumption would be necessary for .04 test. **SEN. WELLS** explained that it would

depend on the person. Someone weighing 170 lbs. who consumed one beer and took a breath test 30 minutes later would probably register. They chose to use .04 because some cough medicines that contain small amounts of alcohol would not register but if the person consumed two beers, this would register.

Vote: The motion carried 7-2 with SEN. DOHERTY and SEN. BISHOP voting no.

ADJOURNMENT

Adjournment: 11:20 A.M.

SEN. LORENTS GROSFIELD, Chairman

JUDY KEINTZ, Secretary

LG/JK

EXHIBIT (jus28aad)